WINTOP SDN. BHD.

v.

PANG NENG WU & ORS.

HIGH COURT BORNEO
CHONG SIEW FAI J
[SUIT NO. KG 51 OF 1991]
7 MAY 1992

CIVIL PROCEDURE: *Striking out - No reasonable cause of action - RHC 1980 O. 18 r. 19 - Cause of action - Meaning - Pleadings - Statute or its provisions not pleaded cannot be relied upon.*

This is an application by defendants to strike out plaintiff's statement of claim on the ground of no reasonable cause.

By an oral agreement, plaintiff agreed to sell a piece of land to the defendants. Plaintiff alleged that the land was transferred to the defendants to enable the latter to obtain loan and overdraft to pay the balance of RM110,000 being the sum outstanding then and that a sum of RM60,000 being balance of the purchase price still remaining unpaid.

Defendants in their amended defence admitted that the land had been transferred to them but denied that it was for the purpose of obtaining loan and overdraft from the bank. They also alleged that the full purchase price had been paid to the plaintiffs.

Defendants took out the present application to strike out plaintiffs' statement of claim on the ground that it discloses no reasonable cause.

They rest their application solely on the ground that s. 4 of the Statute of Fraud 1677 (UK) was not complied with because the action was based on an oral agreement.

Plaintiffs contended that s. 4 of the said statute has no application to a contract of sale of land in Sarawak.

Held:

[1] It need hardly be emphasized that for such an application, no affidavit evidence is admissible.

[2] The term "cause of action" has been defined to mean a factual situation the existence of which entitles a person to obtain from the Court a remedy against another. It includes every fact which is material to be proved to entitle the plaintiff to succeed and every fact which the defendant would have a right to traverse.

[3] A reasonable cause of action means a cause of action with some chances of success when only the allegations in the pleading are considered.

[4] Even assuming but without deciding that s 4. of the Statute of Fraud 1677 (UK) is applicable, the application must still fail for the following reasons.

(a) The Statute or its provision is not pleaded;

(b) The defendants in their amended defence plead that the terms of the agreement between the parties had been reduced into writing;

(c) Specific performance of an oral contract for the sale of land may be enforced if the contract is supported by a sufficient act of part performance. On the pleadings, there are averments of sufficient acts of part performance of the agreement to take the case out of the said statute.

[Application dismissed with costs.]

Cases referred to:
Letang v. Cooper [1965] 1 QB 232 ***(foll)***
Cooke v. Gill [1873] LR 8 CP 107 ***(foll)***
Drummond Jackson v. British Medical Association [1970] 1 WLR 688 ***(foll)***
Olley v. Fisher [1887] 34 Ch D 367 ***(foll)***
Clarke v. Callow [1877] 46 LJ QB 53 ***(foll)***
Steedman v. Steedman [1974] 2 All ER 977 ***(foll)***

Legislation referred to:
Law of Property Act 1925 [UK], s. 40
Rules of the High Court 1980, O. 18 rr. 8(1), 19(1)(a), (2)
Statute of Frauds 1677 [UK], s. 4

For the plaintiff/respondent - Lina Wee; M/s. Charles Ling
For the defendants/applicants - Paul Tang; M/s. Tan & Yap

JUDGMENT

Chong Siew Fai J:

This is an application by the defendants to strike out the statement of claim on the ground that it discloses no reasonable cause of action. It need hardly be emphasized that for such an application no affidavit evidence is admissible (O. 18 r. 19(2)) as indeed neither side has filed any affidavit. Only the pleadings as filed may be looked at.

In *Letang v. Cooper* [1965] 1 QB 232 CA the term "cause of action" has been defined to mean a factual situation the existence of which entitles a person to obtain from the Court a remedy against another (per Diplock LJ at 242). It includes every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which the defendant would have a right to traverse. *Cooke v. Gill* [1873] LR 8 CP 107 at 116 per Brett J. And, a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. *Drummond-Jackson v. British Medical Association* [1970] 1 WLR 688 at 696 CA per Lord Pearson.

What is the position of the plaintiff's case based on the allegations in its statement of claim? The plaintiff is claiming:

(1) specific performance of agreement which, in effect, is for payment of balance of the purchase price of the land sold and already transferred to the defendants;

(2) alternatively, rescission of the agreement and the transfer of the said land back to the plaintiff;

(3) declaration that the sum of RM140,000 paid by the defendants be forfeited or alternatively, account or enquiries;

(4) further or alternatively, damages for breach of contract;

(5) interest and costs.

Briefly, the basis of the claims of the plaintiff company is that by an oral agreement it agreed to sell the land in question to the defendants, that the land had been transferred to the defendants but a sum of RM60,000 being balance of the purchase price remains unpaid. The plaintiff also alleges that the defendants had proposed to pay the balance by instalments which the plaintiff refused to accept. In the amended defence, several of the plaintiff's allegations were merely denied by the defendants who "put" the plaintiff "to strict proof". The defendants admit that the land had been transferred to them by the plaintiff but they allege that the full purchase price had been paid (see paras. 4, 5 and 10 of the amended defence). It is the contention of the plaintiff that the land was transferred to the defendants to enable the latter to obtain loan and overdraft from a bank to pay the sum of RM110,000 being the balance of the agreed price outstanding at the material time. (See paras. 5 to 10 of the statement of claim). These the defendants deny. (See paras. 2, 3 and 4 of the amended defence).

The defendants rest their application on solely one point. It is contended on their behalf relying on s. 4 of the Statute of Frauds 1677 (English) that since the cause of action in the instant case is based on an oral agreement, there is no reasonable cause of action. Section 4 of the said Statute was to the effect that a contract for the sale or other disposition of land or any interest in land is unenforceable unless it, or some memorandum or note of it, is in writing and signed by the party to be charged or by some person lawfully authorised by him to sign.

Learned Counsel for the plaintiff contends that s. 4 of the said Statute has no application to a contract for sale of land in Sarawak. However, I find it unnecessary to deal with the point. For our present purpose, even assuming, but without deciding, that the said s. 4 is applicable, the application must, in my judgment, fail for the following reasons:

(1) The statute or its provision is not pleaded. That being so, it is not open to the defendants to rely on it or to raise the point. *Olley v. Fisher* [1887] 34 Ch. D 367; *Clarke v. Callow* [1877] 46 LJ QB 53; O. 18 r. 8(1).

(2) The defendants, in their amended defence, plead that the terms of the agreement between the parties for the sale and purchase of the land had been reduced into writing. (See para. 10 of the amended defence). While the intention to so plead may be to raise the defence that the purchase price had been paid in full (see para. 11 of the amended defence), nevertheless the defence contention of failure to reduce the contract into writing must, by the defendants' own pleading, be untenable.

(3) Specific performance of an oral contract for the sale of land may be enforced if the contract is supported by a sufficient act of part performance. *Steedman v. Steedman* [1974] 2 All ER 977 (though a case on s. 40 of the Law of Property Act 1925 - English - the equivalent of which in the earlier statutory provision was s. 4 of the Statute of Frauds 1677). On the pleadings in our instant case there are averments of sufficient acts of part performance of the agreement to take the case out of the said Statute. In the statement of claim the plaintiff alleges execution of a memorandum of transfer conveying the land to the defendants in order to enable the latter to obtain loans of RM110,000 as being then the balance sum of the purchase price agreed under the oral agreement (see paras. 3, 5, 6, 7 and 9 of the statement of claim). The land has been transferred to and registered in the names of the defendants. This is admitted by the defendants (see para. 10 of the statement of claim and para. 5 of the amended defence). I am, of course, aware of the defence contention that the purchase price had been paid in full. That, however, is a matter in issue. On the pleadings there are averments of sufficient part performance that relates to the oral contract.

In the premises I am unable to accept that the statement of claim ought to be struck out under O. 18 r. 19(1)(a) for disclosing no reasonable cause of action. The application is dismissed with costs to the plaintiff.

Also found at [1992] 3 CLJ 1494